

MAY 21 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

WENDY N. LATCHUM, Individually and as
parent and guardian ad litem of her minor
children, and as special administrator of the
estate of John Russell Latchum, Jr.; JOSHUA
RYAN LATCHUM, a minor; BREANNA
NICHOLE LATCHUM, a minor,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 01-17403

D.C. No. CV-00-00826-SOM

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Susan Oki Mollway, District Judge, Presiding

Argued and Submitted May 7, 2003
Honolulu, Hawaii

Before: LEAVY, RYMER, and T.G. NELSON, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

Army Chief Warrant Officer (CWO) John Russell Latchum was shot and killed by civilian trespassers while vacationing on authorized leave at the Waianae Army Recreational Center (WARC), Hawaii. His wife, Wendy N. Latchum, individually and as parent and guardian ad litem of their minor children, and as special administrator of his estate, appeals the district court's Fed. R. Civ. P. 12(b)(1) dismissal of her action brought under the Federal Tort Claims Act, 28 U.S.C. § 2674, (FTCA) against the United States. The district court dismissed the action for lack of subject matter jurisdiction pursuant to the Feres doctrine, which bars FTCA suits for service-related injuries to service members, and suits for derivative injuries sustained by a soldier's family members. Feres v. United States, 340 U.S. 135 (1950). We have jurisdiction over this timely appeal under 28 U.S.C. § 1291. We review de novo, Dreier v. United States, 106 F.3d 844, 847 (9th Cir. 1996), and we affirm.

"[W]hatever the original scope of the Feres doctrine, it is clear that it has been interpreted . . . by our court . . . to include military-sponsored recreational programs." Costo v. United States, 248 F.3d 863, 869 (9th Cir. 2001), cert. denied, 534 U.S. 1078 (2002). The facts of this appeal cannot be distinguished from Costo. WARC is owned and operated by the Department of the United States Army as a military recreation facility in the Army's Morale, Welfare, and

Recreation program. Latchum, as an active duty Army serviceman, had first priority to use WARC. While using the facilities, he was governed by Army Regulations, WARC rules, and other military rules. The negligence alleged in the complaint, inadequate security, occurred as a result of decisions made by military personnel. All of these factors weigh in favor of applying the Feres doctrine. See Costo, 248 F.3d at 867. The use of the cabins by some civilian employees of the Department of Defense does not undercut this conclusion. See Bon v. United States, 802 F.2d 1092, 1095 (9th Cir. 1986). Nor does the fact that Latchum was on authorized leave, because his use of WARC was a benefit of his military status. See Uptegrove v. United States, 600 F.2d 1248, 1249-50 (9th Cir. 1979).

Appellant's remaining arguments, concerning statutory interpretation and equal protection, have been previously considered and rejected by this court.

See Costo, 248 F.3d at 864.

AFFIRMED.